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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/109,460      07/02/98      FERRELL

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QM02/0908

EXAMINER

GRAVINI, S

ART UNIT

PAPER NUMBER

3744

DATE MAILED:

09/08/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/109,460

Applicant(s)  
Gary W. FERRELL et al.

Examiner  
Steve Gravini

Group Art Unit  
3744



☒ Responsive to communication(s) filed on Sep 23, 1998

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Sep 23, 1998 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3744

## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration. The declaring statement "as amended by any amendment" is not specifically referred to in the declaration.

It declares that the application is a continuation of "089/034,369;" however the declaration would be more precise to state "09/034,369." This continuation statement does not make the oath defective, but rather raises an objection by the examiner.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3744

3. Claims 1-13 and 14-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 13-20 respectively of copending Application No. 09/034,369. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-13 recite a broader range of drying times, making it an obvious modification to the copending application. It would be obvious to one skilled in the art of coating dryers to apply the recited longer period of drying times, to ensure more complete drying, than claimed by the narrower drying times in the copending application. Furthermore claims 14-26 recite a narrower surface in which contaminants are to be removed, making it an obvious modification to the copending application. It would be obvious to one skilled in the art of coating dryers to apply the less limiting contaminant removal surface for more precise drying than claimed by the broader surface area drying in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mohindra et al. (5,571,337 and 5,685,327) and Matthews (5,776,296) teach coating dryers.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". **If applicants chose to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Information may also be sent to the examiner by facsimile machine at (703) 308-7764. Please see MPEP § 502.02.

*Stephen M Gravini*  
**STEPHEN M. GRAVINI**  
**PRIMARY EXAMINER**

smg  
September 1, 1999